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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. [redacted] 71

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,
vs.
MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,
AND
PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,
vs.
EASTERN HEIGHTS PRESBYTERIAN CHURCH and FRANK L. PERRY, SR., JOHN BRUNING, LESTER R. SARGENT, HARDIN C. NORMAN and ARMIN S. HUBERT, Trustees,
Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT, MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH

RICHARD T. COWAN
FRANK B. ZEIGLER
JAMES EDWARD MCALEER
24 East Oglethorpe Avenue
Savannah, Georgia
Attorneys for Respondent

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No. 1380

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
Petitioners,

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MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH,
Respondent,

AND

PRESBYTERIAN CHURCH IN THE UNITED STATES and J. LEHMON BRANTLEY, Chairman of the Administrative Commission of the Presbytery of Savannah,
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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF OF RESPONDENT, MARY ELIZABETH BLUE HULL MEMORIAL PRESBYTERIAN CHURCH

STATEMENT OF THE CASE

Mary Elizabeth Blue Hull Memorial Presbyterian Church filed an action in Chatham County, Georgia Superior Court asking that Petitioners be enjoined from a threatened eviction of Respondent from its Church property. Petitioners filed an answer and cross action praying that the Respondent be enjoined from the use of Respondent's property. Respondent had formerly been affiliated with Petitioner Church but had withdrawn due to action by Petitioner Church making it impossible for Respondent to retain its affiliation and at the same time remain true to the doctrine, tenets and beliefs of the Presbyterian Church as practiced and taught at the time of its affiliation in 1890.

Respondent is a Georgia Corporation incorporated in 1914 pursuant to the provisions of the Georgia Religion Corporation Act, 1933 Code of Georgia Section 22-401. Unlike most new Presbyterian Churches, which are usually formed by the various Presbyteries, Respondent Church had been established in 1868 by the Independent Presbyterian Church of Savannah, which is not a member of Petitioner Church, although it contributed to Petitioner Church on a voluntary basis. Respondent later became an independent church and operated as such until 1890 at which time it joined the Savannah Presbytery of the Presbyterian Church In The United States.

At no time during its existence either as a mission or independent Presbyterian Church, or as an affiliated Church with Petitioners, have any of Petitioners ever contributed any sums of money in any amount for the formation of the Church, the acquisition of the property involved, the erection of Church buildings, the maintenance and operation of the Church, the upkeep of the Church property, or for any other reason; nor had it ever exercised any control over Respondent's property.

In 1890, the date of its affiliation with Petitioner Church, both Petitioners and Respondent used as its Articles of Faith the Presbyterian Confession of Faith, the Larger and Shorter Catechisms and the Holy Bible. These documents, along with the Book of Church Order, constitutes the Church Constitution. The Constitution contains clear provisions prohibiting the Church from meddling in civil affairs, and requiring its members to obey the civil law. It further provides a means

of amending its Constitution. Disregarding the amendatory process, Petitioner Church in recent years has abandoned these doctrines and openly advised its members that they are free to violate the laws of the land and disregard its own Constitutional prohibitions where the individual members feel there is moral justification. The Petitioners have made pronouncements condemning our Country's participation in the war against the spread of Communism in Viet Nam. Respondent Church has adhered to the doctrines and beliefs of the Church as provided by the Constitution.

Due to the deviations from its Constitution by Petitioners, Respondent Church was placed in a position of having to either accept these unconstitutional acts and become a party to them or withdraw. Not willing to compromise its beliefs and its adherence to its Constitution, Respondent withdrew its affiliation with Petitioner Church by resolution of its congregation in 1967. They were then notified by Petitioner Church that Petitioner Church was laying claim to the Church property of Respondent corporation and Respondent was notified to vacate. An injunction was filed by Respondent asking that this be prevented and Petitioners filed a cross action asking the Court to declare the property theirs, even though no member of Respondent corporation joined in the suit with Petitioners. The case came on for hearing in the Superior Court of Chatham County, Georgia and the jury returned a verdict for the Respondent; judgment taken. The Petitioners appealed to the Supreme Court of Georgia which sustained the judgment of the trial court. The Petitioners then filed a motion for rehearing and for the first time raised the Federal question. The Supreme Court of Georgia denied the motion.

QUESTIONS PRESENTED

I.

Will this Court review or revise the decisions of the Supreme Court of Georgia where no constitutional question was raised until the motion for a rehearing in the Supreme Court of Georgia, although Petitioners had the opportunity in the trial court to raise the questions and no existing remedies were denied Petitioners.

II.

Can Petitioners contest the jurisdiction of the civil court

where they had prayed for affirmative relief invoking the rulings by the civil court as to the matters now complained of.

III.

Can a denomination, such as the "Presbyterian Church In The United States," take control of property belonging to a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the denomination as accepted at the time the local congregation united with the denomination, without amending its Constitution.

I.

Federal Question Not Raised in Time

No Constitutional or Federal question was ever raised by the Petitioners until the motion for rehearing in the Supreme Court of Georgia at which time they maintained that the relief sought by the plaintiffs in the Court below would controvert the First and Fourteenth Amendments to the Constitution of the United States and destroy the separation between Church and State even though the Petitioners themselves had filed a cross action in the trial court and prayed for affirmative relief.

The Petitioners contend that the Federal question was timely presented on the ground that the decision of the Supreme Court of Georgia overruled *Mack vs. Kime.* However the Supreme Court of Georgia in *Mack vs. Kime,* 129 Ga. 1 (2) (58 SE 184, 24 LRA (NS) 675), held:

> "The general rlue is that where property rights are involved, the civil courts will interfere to protect the members of an ecclesiastical organization who adhere to the tenets and doctrines which the organization was organized to promulgate, and protect them in the right to use the property, as against those members of the organization who are attempting to divert the same to purposes utterly foreign . . ." See also *Tucker vs. Paulk,* 148 Ga. 228 (3) (96 SE 339), where this court approved the trial court's finding on whether the plaintiffs had "departed from the organization and doctrine of the church."

The only point overruled by the Supreme Court of Georgia in the present case was the degree of abandonment or departure necessary for relief and this was only an interpretation by the Court of its previous ruling.

The *Mack* case, in discussing the degree of abandonment or departure necessary to obtain protection, uses terminology

such as "complete abandonment," "purposes utterly foreign," "entirely abandon," and "abandon altogether." We disagree. We do not believe that "complete" or like degree of abandonment or departure is necessary for relief. To the extent that *Mack vs. Kime*, 129 Ga. 1, supra, requires such standard, it is expressly overruled.

The Civil Courts of Georgia have always ruled that when property rights are involved civil courts will protect them against wrongful diversion.

1933 Code of Georgia Annotated, Section 22-408 provides:

> "Courts are reluctant to interpose in questions affecting the management of the temporalities of a church; but when property is devoted to a specific doctrine or purpose, the courts will prevent it from being diverted from the trust."

The Supreme Court of Georgia said in *Dowdell et al vs Cherry et al., trustees*, 209 Ga. 849:

> "While courts are reluctant to interfere in questions affecting the internal affairs of a religious organization, nevertheless, where property has been conveyed in trust for the use and benefit of a church, a court of equity will assume jurisdiction for the purpose of preventing a diversion of the trust."

and in *Chatfield vs. Dennington et al*, 206 Ga. 762 the Supreme Court of Georgia said:

> "3. While courts are reluctant to interpose in questions affecting the management of the temporalities of a church where property is devoted to a specific doctrine or purpose, the Courts will prevent it from being diverted from the trust."

The degree of abandonment or departure necessary to be shown to obtain protection in civil courts would not be a Federal question and we respectfully maintain that there is no Federal question involved. The interpretation by the Courts of the State of the written and unwritten laws of the State is not reviewable by the Supreme Court of the United States.

II.

Petitioners Themselves Invoked Civil Court Ruling

The Petitioners contend that the decision of the Supreme Court of Georgia would breach the wall that has historically separated the Church from the State in this Country and would allow civil courts to enter the ecclesiastical field. The Petitioners however had filed a cross action to the Respondent's

petition and had prayed for affirmative relief involving the rulings by the civil court on the question they now complain of. We cannot understand how the Petitioners could come into Court, pray for relief and after the matter had been adjudicated in the civil courts then deny that the civil courts had jurisdiction to hear the matter.

III.

Denominations Must Adhere to It's Constitution

Does the denomination have the right to violate its established Constitution and force a member Church to accept the unlawful acts or in the alternative lose its property.

No denomination can exercise its share of control over a local congregation so as to require the property of the latter to be used for propagation of doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local congregation united with the denomination. 76 Corpus Juris Secumdem, Section 70, Religious Societies.

The separation of Church and State is a dual obligation. The Constitution of the Presbyterian Church in the United States provided in unquestioned terms that the Church shall not meddle in civil affairs. To allow this to happen would invite disaster and a breakdown in the separation of Church and State.

Questions pertaining to strictly religious matters are left to church tribunals where property rights are not involved where the church doctrines do not violate the law of the land and where the denomination does not exceed its authority under its Constitution. Civil courts do have jurisdiction and have accepted such jurisdiction many times to protect a minority who are being forced to withdraw or adhere to doctrines in conflict with the fundamental teachings of the denomination as accepted at the time the local Church united with the denomination. *Church of God at Markleysberg vs. Church of God at Markleysberg*, 50 Atlantic 2nd 357; *Bear vs. Heasley*, 57 N.W. 270; *Lemp vs. Raven*, 71 N.W. 627. To what extent the civil court will intercede to prevent the unlawful or unconstitutional acts is a matter of State law. "Except in matters governed by the Federal Constitution and by acts of Congress, the law to be applied in any case is the law of the State, and whether the State law shall be declared by its legislature in a statute or by its highest Court in a decision is not a matter of

Federal concern." *Erie Railroad Company vs. Harry J. Tompkins*, 304 U. S. 64.

The real question in the matter is whether the State has the right to interpret its own Statute, common law and its previous decisions. *Mack vs. Kime*, supra, was a Georgia case in which the Georgia Supreme Court found that the Constitutional provision of two merging bodies had been complied with. It discussed points of alleged deviations; however, it declined to base its ruling on the deviation question. It stated by way of dictum that the rule is total deviation in the case of a local church.

Petitioners quoted citations which they contend rule in no event can the deviations be sufficient. Their contention is that regardless of what steps are taken by the denomination and regardless of how far the denomination deviates, there can be no relief for a member Church and further that the State can make no provision or hand down any decision repecting deviations. *Mack vs. Kime*; *Watson vs. Jones*, 80 (13 Wall) US 679 (1871); *St. John's Presbytery vs. Central Presbyterian Church of St. Petersburg*, 102 So 2nd 714 (Fla. 1958).

Mack vs. Kime was decided on the issue of conformity with the Church Constitution and the Georgia Court found that the Constitution had been complied with. *Watson vs. Jones* was decided before *Erie vs. Tompkins* and is now limited by State law. These cases also involved split congregations where minority rights of the congregations needed protecting. *St. John's* was a State decision and turned on the language in the deed which contained a trust clause in favor of the denomination and furthermore involved church property that had been paid for by the Presbytery.

We do not believe that a State Court cannot intervene to protect property rights of a minority where the majority substantially deviates.

The proposition that the deviation must be total is unrealistic. If the language in *Mack vs. Kime* constituted this rule there is no doubt that the State Court has the right to modify the rule if it is unrealistic and unjust, just as this Court overruled *Swift vs. Tyson* in the *Erie Railroad vs. Tompkins* case. Under the so-called "Total Deviation" rule a local Church could be made to accept many propositions completely foreign

to the tenets and doctrine of the Church at the time of its affiliation. The highest Court in Georgia has ruled that the deviation need not be total, but must be substantial and to reverse that decision would be interpreting the Georgia law by the Federal Court and would take from the State the righ to decide what its law is. This Court has recognized in previous cases that the process of trial and error, of change of decision, in order to conform with changing ideas and conditions is traditional with courts administering the common law. Since it is for the State courts to interpret and declare the law of the State, it is for them to correct their errors and declare what the law has been as well as what it is. State courts, like this Court may ordinarily overrule their own decisions without offending the Constitutional guaranties, even though parties may have acted to their prejudice in the faith of the earlier decisions. *Brinkerhoff-Farris Trust and Savings Co. vs. Hill*, 74 L. ed., page 1114, 281 U. S. 673 (Note 8).

The local Church alleged and proved, without contradictory evidence by Petitioners, certain deviations that constitute a substantial abandonment of doctrines and tenets of the Church as practiced in 1890, the date of its affiliation. These abandonments were not the result of Constitutional amendments even though the Church Constitution provided a method for amending its Constitution. The local Church objected to the endorsing of civil disobedience and the violating of the laws of the land as a material departure from the fundamental beliefs of the Presbyterian Church as professed in 1890 in that the Westminster Confession of Faith states:

> "It is the duty of the people to pray for magistrates, to honor their persons, to pay them tribute and other dues, to obey their lawful commands, and to be subject to their authority, for conscience sake. Infidelity, or difference in religion, doth not make void the magistrate's just and legal authority, nor free the people from their due obedience to him: from which ecclesiastical persons are not exempted; much less hath the Pope any power or jurisdiction over them in their dominions, or over any of their people; and least of all to deprive them of their dominions or lives, if he shall judge them to be heretics, or upon any other pretense, whatsoever."

The Presbyterian Church In The United States by encouraging civil disobedience violated one of the basic beliefs of the faith in passing a resolution by the General Assembly endorsing civil disobedience, part of which provided:

"Civil Disobedience: The Christian and the State

This brings to us the problem of civil disobedience; the open, non-violent and conscientious refusal to obey a law or laws, as a means of appeal to a higher law, combined with the willing acceptance of the penalty. It is an extreme demonstration of dissatisfaction with some aspect of society. It also presents in its purest form the problem of the relation of the Christian to the State." The resolution further stated in part:

"It is true that within our system of government, means are provided, through the law, to present and adjudicate grievances for such injustices. Yet when due course of civil law is denied or abridged, the Christian, for whom 'God alone is Lord of conscience,' may validly appeal to the Higher Law, led by the inner witness of the Holy Spirit, speaking in and through the scriptures. This great ordering Word may lead him against the world, against the establishment of the civil magistrates. But he should be very cautious about taking such a lonely position and should hold it only in fear and trembling. If it leads him into civil disobedience, he should not try to justify his position before men. He had violated the law, the public standard of justice, and hence must recognize his liability to the judgment of the civil court.

The church exist to unite men by God's grace with themselves, with God, and with their fellowmen—to make them whole. Therefore, it should give the support of Christian compassion to any member who, following his conscience in obedience to the Word, engages in civil disobedience."

The local Church further objected that the ordaining of women as preachers and ruling elders was a violation of its Constitution. This was a direct violation of the Westminster Confession of Faith and the Book of Church Order and although peculiar to the Presbyterian faith in existence in 1890 and a deviation therefrom by the national Church is an unlawful infringement upon rights of the local believers.

The ruling that a majority of a Church cannot substantially deviate from the faith and force a minority to accept doctrines alien to its established tenets without first amending its Constitution in no way violates the separation of Church

and State. The underlying reasons behind the Church's Constitutional provisions that have been violated was to prevent a clash with the State.

For Churches to be used as political levers in civil matters will bring chaos if followed to its logical conclusion. "Give unto Ceasar that which is Ceasars" was a wise rule. The Westminster divines which formulated the Presbyterian Confession of Faith recognised this when they provided that Presbyterians were to obey the civil magistrate. Presbyterians and other Christians migrated to this Country to escape State established Churches so that they could worship without interference from the State. They knew that this meant that they in turn could not interfere or meddle in civil affairs if they wished to remain separated from the State. This is a basic tenet of their faith and there is no violation of the establishment clause or the free exercise clause of the First Amendment to the United States Constitution for a State Court to rule that the property rights of a minority group will be protected.

Petitioners argue that Secular Courts will necessarily violate the establishment clause and the free exercise clause of the United States Constitution in any case involving a deviation from the faith. In the Supplemental Opinion on Rehearing before the Supreme Court of Arkansas in the case of *Holiman vs. Dovers*, decided in 1963, 366 S.W. 2nd 197, "15 ALR 3rd 277," Mr. Justice George Rose Smith declared that it is unquestionably the duty of the Courts to decide legal questions involving the ownership and control of Church property, *regardless of the form of ecclesastical government that may be in effect.* He further stated that a local Church could secede but could not take the Church property with it where the effect of that action would be to devote the property to doctrine fundamentally different from those to which the property was dedicated. Conversely, if it is the parent organization that har separated from the basic articles of faith, the local Church has the right to secede and retain its property, citing *Boyles vs. Roberts*, 222 Mo. 618, 121 S.W. 805. Mr. Justice Smith referred to the Iowa rule, where a majority being accused by the minority, the accused sit in judgment which it declares in its favor, and then pleads the judgment it declares as conclusive of its innocence, because no other man or body of men has authority to interfere. However such a rule may serve in purely eccles-

astical relations, we unhesitatingly say the civil law will not adhere to it where the result is to divert trust property from its proper channel. *Mt. Zion Baptist Church vs. Whitmore*, 83 Iowa 138, 49 N.W. 81. An appendix attached to the case of *Hollman vs. Bowers* list 27 jurisdictions which have decided this question, 25 of which hold that the courts will enjoin the majority faction from devoting the Church property to purposes constituting a fundamental departure from the traditional faith, customs, usages, and practices of the Church, including *Chatfield vs. Donnington*, 206 Ga. 762.

Is it true, as Petitioners argue, that whether there is a violation of the Constitutional amendment respecting the separation of Church and State is determined by the type of Church government? Can Secular Courts decide property rights in a congregational form of Church government case but cannot do so where another form of Church government is involved? We do not believe that the Constitutional provision, which in essence requires neutrality, depends on the mode of Church government. In a congregational type Church a majority of the congregaiton rules. The majority constitutes the highest authority in that particular Church and is equivalent to the General Assembly of the Presbyterian Church In The United States in this respect. If a constructive trust has been created in the case Sub Justice, the Courts can intervene to prevent the General Assembly from devoting the property to purposes constituting a fundamental departure from the faith, customs, usages, and practices of the Church the same as it can in a congregational Church.

CONCLUSION

WHEREFORE the Respondent would respectfully request that there being no Federal question involved and the effort to raise same not being timely, that the Certiorari be denied.

Respectfully submitted,

RICHARD T. COWAN

FRANK B. ZEIGLER

JAMES EDWARD MCALEER
Counsel for Respondent

24 East Oglethorpe Avenue
Savannah, Georgia 31401

CERTIFICATE OF SERVICE

I Richard T. Cowan, of counsel for Respondent, hereby certify that I have served a copy of the foregoing Brief for denial of the Writ of Certiorari by depositing a copy of the same in the United States Mail, properly stamped and addressed, to each of the following:

Robert B. Troutman
Charles L. Gowen
434 Trust Company of Georgia Building
Atlanta, Georgia 30303

Frank S. Cheatham, Jr.
32 East Bay Street
Savannah, Georgia 31401

This 24th day of May, 1968.

Richard T. Cowan